not the person named in the arrest warrant, summary judgment was inappropriate. App. 8a. Agent Gregory's position that his (imputed) "actual knowledge" had no place in the Fourth Amendment calculus, the court of appeals said, was "completely without merit." *Id.*

The Ninth Circuit's focus on Agent Gregory's subjective beliefs - what the court called his "knowledge" - is irreconcilable with three key tenets of this Court's probable-cause jurisprudence. First, this Court has repeatedly affirmed that probable cause is not just a necessary condition to a valid arrest, but a sufficient condition, as well. *See, e.g., Devenpeck v. Alford*, 125 S. Ct. 588, 594 (2004) ("Those are lawfully arrested whom the facts known to the arresting officers give probable cause to arrest."); *id.* at 593 (arrest valid "where there is probable cause to believe that a criminal offense has been or is being committed"); *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."); *Whren v. United States*, 517 U.S. 806, 819 (1996) (embracing "traditional common-law rule that probable cause justifies a search and seizure").

Second, this Court has consistently held that the probable cause sufficient to justify an arrest is an objective measure. *See, e.g., Ornelas v. United States*, 517 U.S. 690, 696 (1996) (question "whether the[] historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to ... probable cause"); *Beck v. Ohio*, 379 U.S. 89, 91 (1964) (probable cause exists if at the time of the arrest "the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had

committed or was committing an offense"); *see also Saucier*, 533 U.S. at 207 (quoting *Beck*'s objective standard); *Hunter v. Bryant*, 502 U.S. 224, 228 (1991) (per curiam) (same).

The third principle – really just a corollary of the second – is that "subjective considerations" play no role whatsoever in the probable-cause calculus. *Whren*, 517 U.S. at 814; *see also id.* at 813 ("subjective intent" irrelevant) (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978)); *id.* at 814 (same); *Devenpeck*, 125 S. Ct. at 594 ("subjective reason[s]" irrelevant); *id.* at 815 ("subjective intent" irrelevant); *Arkansas v. Sullivan*, 532 U.S. 769, 771-72 (2001) (per curiam) ("subjective intentions" irrelevant); *Ohio v. Robinette*, 519 U.S. 33, 38 (1996) ("subjective thoughts" irrelevant). To put the point slightly differently, "'the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.'" *Whren*, 517 U.S. at 813 (quoting *Scott*, 436 U.S. at 136). Translation: So long as the objective facts before the officer add up to probable cause to arrest, it just doesn't matter what's going on inside the officer's head.

As this Court has said before in summarily reversing this same court of appeals on a similar issue, "[t]he decision of the Ninth Circuit ignores the basic import of these decisions." *Hunter*, 502 U.S. at 227. The court below sought to limit the principle embodied in this Court's probable-cause decisions to one focused solely on "ulterior motives." It is true, the Ninth Circuit said, that "allegations of ulterior motives cannot invalidate police conduct that is justified by probable cause." App. 7a. But, the court said, Agent Gregory's actions "are not impugned because of his motive, but because of his

claimed *knowledge* that [Lee] was not the person named" in the arrest warrant. *Id.*

The distinction between "motive" and (supposed) "knowledge" that underlies the Ninth Circuit's decision is as untenable as it is elusive. It cannot be squared with the letter of this Court's decisions, which excise "subjective considerations" generally from the probable-cause analysis. *See supra* at 7. Nor is the Ninth Circuit's position consistent with the spirit of this Court's decisions eschewing analysis of subjective perceptions. Those decisions seem rather clearly to be driven by two related considerations: first, that police need a clear rule that is easy to apply in the field; and second, that courts need a clear rule that is easy to apply after the fact. *See Whren*, 517 U.S. at 814-15. The rule that this Court's cases establish – that probable cause, understood objectively from the perspective of a reasonable officer, is a sufficient basis for arrest – fits both squarely. The Ninth Circuit's rule – which requires a police officer to pit his own subjective perceptions against the record facts, and then invites a reviewing court to psychoanalyze the officer post hoc – fits neither. Whether a court shrinks an arresting officer's head to flush out his true motives or to discern his supposed "knowledge," it shrinks his head just the same. And that is precisely the result this Court's probable-cause precedents aim to foreclose.[2]

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[2] There is, we should say, no reason to believe that the Ninth Circuit's inquiry into a defendant's subjective perceptions would be limited to cases about the validity of arrests. Suppose a suspect alleged that, despite a mountain of evidence against him, the public prosecutor "actually knew" that he was innocent. Under the logic of its decision here, the Ninth Circuit would presumably find a colorable malicious-prosecution claim, deny qualified immunity, and send that case to a jury, as well.

B. This Court's Decisions Make Clear That Qualified Immunity Is Governed by Objective, Rather Than Subjective, Considerations.

The Ninth Circuit's decision is equally irreconcilable with this Court's qualified-immunity decisions. The court of appeals correctly stated the applicable legal rule: Immunity attaches unless it "'would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'" App. 9a (quoting *Saucier*, 533 U.S. at 202). The court then held – and this is where, with respect, it went off the track – that because "[k]nowingly arresting the wrong person" is a "self-evident wrong" and "plainly unlawful," Agent Gregory had no immunity from suit. *Id.* at 10a.

The Ninth Circuit's mistake was in, again, allowing subjective considerations (Gregory's supposed inferences concerning Lee's innocence) to govern the immunity inquiry. As the petition makes quite clear, the *whole point* of *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) – the foundational case that ushered in modern qualified-immunity jurisprudence – was to excise subjective considerations from immunity determinations. Before *Harlow*, qualified immunity turned, at least in part, on an officer's "subjective good faith." *Id.* at 816. This "subjective component" of the immunity inquiry circumscribed the officer's "'permissible intentions.'" *Id.* at 815 (quoting *Wood v. Strickland*, 420 U.S. 308, 322 (1975). The problem, the *Harlow* Court determined, was that the "subjective element" of the qualified immunity defense "frequently ... proved incompatible with" the principle "that insubstantial claims should not proceed to trial" – the reason being that "an official's subjective good faith ha[d] been considered to be a question of fact that some courts ha[d] regarded as inherently requiring resolution by a jury." *Id.* at 815-16.

Because by the time of *Harlow* it was "clear that substantial costs attend the litigation of the subjective good faith of government officials" and because "bare allegations of malice should not suffice to subject government officials either to the costs of trial or to the burdens of broad-ranging discovery," *id.* at 816-18, the Court charted a fundamentally different course. Specifically, the Court jettisoned reliance on an officer's subjective thought processes in favor of a singular focus on the "objective reasonableness of an official's conduct." *Id.* at 818; *accord id.* at 819 ("objective legal reasonableness"). As the Court has since summarized, *Harlow* "replac[ed] the inquiry into subjective malice [with] an objective inquiry into the legal reasonableness of the official action" and thereby "completely reformulated" qualified immunity doctrine. *Anderson v. Creighton*, 483 U.S. 635, 645 (1987). Thus, in the wake of the *Harlow* watershed, qualified immunity has been and is governed by "a wholly objective standard." *Davis v. Scherer*, 468 U.S. 183, 191 (1984). An officer's "subjective beliefs" are categorically "irrelevant." *Anderson*, 483 U.S. at 641.

With all respect, the Ninth Circuit should not be allowed to skirt the very essence of *Harlow* by invoking the truism that "[n]o reasonable officer would believe that he is entitled knowingly to arrest the wrong man pursuant to a facially valid warrant the officer knows was issued for someone else." App. 9a. Indeed, that is exactly the sort of move this Court rejected in *Anderson*. There, the Court clarified that it is not enough that the "relevant 'legal rule'" be clear in the abstract; rather, it must be clearly established "in a more particularized, and hence more relevant sense." 483 U.S. at 639-40. Specifically, this Court held, it must be that "a reasonable official would understand that *what he is doing* violates" the right asserted by the plaintiff. *Id.* at 640 (emphasis added). The

question here, therefore, is not whether an officer could, as a philosophical matter, think it permissible "knowingly to arrest the wrong man." Instead, the question is whether, "in the situation he confronted," *Saucier*, 533 U.S. at 202, and based on "the information [he] possessed," *Anderson*, 483 U.S. at 641, it was objectively legally reasonable" for Agent Gregory to conclude that his arrest of Lee was lawful, *id.* at 641.

There is a final immunity-related point worth making – a perverse irony of sorts that demonstrates the wrongheadedness of the Ninth Circuit's decision. As noted above, in the years before *Harlow*, the qualified-immunity standard embodied a "subjective component" that "refer[red] to 'permissible intentions.'" *Harlow*, 457 U.S. at 815 (quoting *Wood*, 420 U.S. at 322). Specifically, immunity was denied under the subjective prong if an officer had a "*malicious intention*." *Id.* (quoting *Wood*, 420 U.S. at 322) (emphasis in original). *Harlow*, again, changed all that; it eliminated the subjective inquiry and thus expressly held that not even "allegations of malice" would suffice to subject government officials to suit. *Id.* at 817. The Ninth Circuit's decision here sets the world on its head (and does the pre-*Harlow* law one better) by denying immunity based on an allegation *not* of intentional bad-faith or malice, but of "knowledge." Knowledge, of course, is a *less* culpable mental state than intent or malice. *See generally* Model Penal Code §2.02(2). So, not only has the Ninth Circuit re-injected subjectivity into the qualified-immunity analysis, it has managed to hold that a state of mind (supposed knowledge) that would have been insufficient to defeat immunity even in the pre-*Harlow* days is now, post-*Harlow*, somehow sufficient. That cannot possibly be correct.

III. The Ninth Circuit's Reliance on Subjective Considerations To Defeat Qualified Immunity Fatally Undermines the Public Policies That Animate Qualified Immunity Doctrine.

The practical implications of the Ninth Circuit's decision are very real. The principles that underlie both the Fourth Amendment and qualified immunity are specifically designed to account for the fact that public officials – and particularly police officers – often must act on a moment's notice in fluid situations. With respect to the Fourth Amendment, this Court has observed, for instance, that officers often act "on the spur (and in the heat) of the moment." *Atwater*, 532 U.S. at 347. So, too, in the qualified-immunity context, the Court has emphasized that there is a risk that "fear of being sued will 'dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties.'" *Harlow*, 457 U.S. at 814 (quoting *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir. 1949)). The point, for present purposes, is that if police believe they will face a Fourth Amendment claim – and lose the protection of qualified immunity – every time that a suspect can *allege* that an arresting officer "actually knew" that he was innocent (App. 8a), they will hesitate in the execution of their official functions. That hesitation, that indecision, is precisely what this Court's decisions have sought to prevent.

In the same vein, the Ninth Circuit's ruling effectively guts the qualified immunity defense. A suspect can *always* allege – "contend[]," as the court of appeals said – that the arresting officer "actually knew" that he was innocent. App. 8a. And, indeed, there will almost always be some shred of evidence to which the suspect could point to support such an allegation. Police work is a messy business; it is rarely cut-and-dried. As the petition

says, "[w]here an innocent person is arrested, it is virtually inconceivable that the police will have been wholly unaware of any circumstances suggesting that they had the wrong individual." Pet. at 25. Under the Ninth Circuit's decision, the mere allegation of officer knowledge, however weakly supported, creates a fact question concerning the officer's subjective perceptions – whether he actually believed that he was arresting an innocent individual. In all such cases – which could well be *all* cases – the Ninth Circuit would deny qualified immunity and send the matter to a jury.

That, again – we are repeating ourselves here – is precisely the result this Court's decisions have endeavored to avoid. In *Harlow* itself, this Court emphasized – in refocusing qualified immunity exclusively on objective considerations – that "'[i]t is not difficult for ingenious plaintiff's counsel to create a material issue of fact" where "a decisionmaker's mental processes are involved.'" 457 U.S. at 817 n.29 (quoting *Halperin v. Kissinger*, 606 F.2d 1192, 1214 (D.C. Cir. 1979), *aff'd by an equally divided Court*, 452 U.S. 713 (1981)). And in *Hunter v. Bryant*, in the course of summarily reversing the Ninth Circuit for "ignor[ing] the import" of *Harlow* and its progeny, this Court emphasized that while it had made clear that "[i]mmunity ordinarily should be decided by the court long before trial," the lower court's treatment of probable cause (the same issue involved here) "routinely place[d] the question of immunity in the hands of a jury." 502 U.S. at 227-28. The point, fundamentally, is that if every suspect's allegation that his captor "actually knew" that he was innocent defeats immunity and requires a trial, it is no overstatement to say that "the protections of qualified immunity are all but lost." Pet. at 27.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

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October 17, 2005